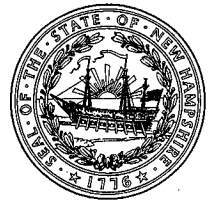




The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

July 23, 2013

H. Curtis Spalding, Regional Administrator
U.S. Environmental Protection Agency, Region I
5 Post Office Square, Suite 100
Boston, MA 02109-3912

Re: State Implementation Plan Revision Submittal for Env-A 1900— Incinerators

Dear Administrator Spalding:

Pursuant to section 110 of the federal Clean Air Act as amended, the state of New Hampshire hereby submits for approval the subject proposed State Implementation Plan (SIP) revision and one exact electronic copy thereof on a disk (enclosed). As Governor Maggie Hassan's designee, I am requesting EPA's approval of this revision, which consists of the additions and amendments to administrative rule **Env-A 1900, Incinerators**.

Env-A 1900 establishes emission standards and operating practices for incinerators otherwise not regulated pursuant to federal incinerator or waste combustor standards or any other state regulation.

On August 31, 2000 and September 14, 2005, Department of Environmental Services (DES) submitted earlier versions of Env-A 1900 as SIP revisions. DES is hereby withdrawing those submittals, as the current submittal contains the version of the rule that took effect on April 23, 2013, superseding the earlier versions.

This submittal contains all documentation necessary to satisfy the SIP completeness requirements pursuant to 40 CFR Part 51, Appendix V. The following administrative materials are included for your review:

- a. Evidence of the rule's adoption
- b. Evidence of legal authority
- c. A copy of the rule
- d. Evidence that all the State's legal requirements were followed in adopting the rule and submitting the SIP revision
- e. Evidence that the public notice was given in accordance with EPA procedures
- f. Certification that, if requested, the public hearing was held in accordance with the public notice
- g. A compilation of public comments and the State's responses thereto

One of the requirements of Appendix V is that the documentation include the date of adoption, as well as the effective date, of the rule. In accordance with RSA 541-A:14, an agency

may adopt a rule after all procedures have been completed. DES adopts a rule on the day its Commissioner signs a letter advising that he has adopted the rule and files the adopted rule with the Director of the Office of Legislative Services (OLS). The rule takes effect the day after it is filed unless a different date is requested in the letter. The attachments hereto contain a letter from the DES Commissioner to the Director of the OLS, documenting the adoption of the rule, as well as written documentation from the OLS as to the filing and effective dates of the rule.

Technical support materials are not included for any of the changes, since it is not anticipated that the enclosed rules will affect previous demonstrations regarding attainment of the national ambient air quality standards.

Should you have any questions regarding this submittal, please contact Karla McManus, Planning and Rules Manager, at karla.mcmanus@des.nh.gov or (603) 271-6854, or Barbara L. Hoffman, SIP Planning Manager, at barbara.hoffman@des.nh.gov or (603) 271-7874. Thank you for your assistance.

Sincerely,



Craig A. Wright
Acting Director
Air Resources Division

Enclosures

cc: Dave Conroy, EPA
Anne Arnold, EPA
Alison Simcox, EPA

EVIDENCE OF THE RULE'S ADOPTION

40 CFR Part 51, Appendix V, 2.1(b)

JILL K. SIEVEKING
DIRECTOR

STATE OF NEW HAMPSHIRE



OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE
107 NORTH MAIN STREET, ROOM 109
CONCORD, NEW HAMPSHIRE 03301-4951

April 22, 2013

Received from Commissioner, Department of Environmental Services

the following certified rule(s) filed with the Director of Legislative Services, in accordance with RSA 541-A, the Administrative Procedures Act.

Document # #10317
Relative to: Env-A 1900 - Incinerators (n/k/a Incinerators and Wood Waste Burners).
Number of Pages: 1
Adopted Date: 4-22-13
Filing Date: 4-22-13
Effective Date: 4-23-13
Expiration Date: 04/23/2023
Notes: N/A

In all communications with this office concerning the above rule(s), please cite the appropriate document number, as indicated above.

A handwritten signature in cursive script that reads "Jill K. Sieveking".

Jill K. Sieveking, Director
Office of Legislative Services

EVIDENCE OF LEGAL AUTHORITY

40 CFR Part 51, Appendix V, 2.1(c)

Laws of New Hampshire, RSA 125-C:4
Rulemaking Authority; Subpoena Power

TITLE X

PUBLIC HEALTH

CHAPTER 125-C

AIR POLLUTION CONTROL

Section 125-C:4

125-C:4 Rulemaking Authority; Subpoena Power. –

- I. The commissioner shall adopt rules under RSA 541-A, relative to:
 - (a) The prevention, control, abatement, and limitation of air pollution, including, but not limited to, open air source pollution, mobile source pollution, and stationary source pollution.
 - (b) Primary and secondary ambient air quality standards.
 - (c) Procedures to meet air pollution emergencies, as authorized by RSA 125-C:9.
 - (d) The establishment and operation of a statewide permit system, as authorized by RSA 125-C:6, XIV, RSA 125-C:11, I and RSA 125-C:11, I-a.
 - (e) Devices, in addition to those devices defined under RSA 125-C:2, subject to the permit requirements of RSA 125-C:11, as authorized by RSA 125-C:11, II.
 - (f) The exemption of certain devices and non-Title V sources from the permit requirements of RSA 125-C:11, I and the conformance of exempted devices to established standards, as authorized by RSA 125-C:11, I.
 - (g) The forms and information required on applications for temporary and permanent permits required under RSA 125-C:11, as authorized by RSA 125-C:12, I.
 - (h) Notification of and public hearing on permit applications, including exemptions from those requirements, as authorized by RSA 125-C:12, II.
 - (i) Fees for permit application and review, as authorized by RSA 125-C:12, IV-d.
 - (j) Procedures for permit application review, as authorized by RSA 125-C:11, IV, and criteria for permit denial, suspension or revocation, as authorized by RSA 125-C:13.
 - (k) Procedures for air testing and monitoring and recordkeeping, as authorized by RSA 125-C:6, XI.
 - (l) Procedures for receiving violation complaints and for rules enforcement, as authorized by RSA 125-C:15, I.
 - (m) Procedures for granting variances, as authorized by RSA 125-C:16.
 - (n) The manufacture, use, or sale of consumer products for purposes of implementing RSA 485:16-c.
 - (o) Applicability thresholds for emissions of particulate matter, mercury, and dioxin as provided in RSA 125-C:10-b, VII(f).
 - (p) The duration of time during which no additional best available control technology determination is required as provided in RSA 125-C:10-b, IV and VI.
 - (q) Procedures for establishing standards for and certification of any material, that is not an exempt fuel, to be combusted in a device at an affected source subject to RSA 125-C:10-b.

(r) Standards and testing requirements for biomass and eligible biomass fuel as authorized by RSA 125-C:6, XIV-a.

I-a. In adopting rules under paragraph I, the department may incorporate by reference standards issued by the California air resources board relative to certification and testing of vapor recovery equipment.

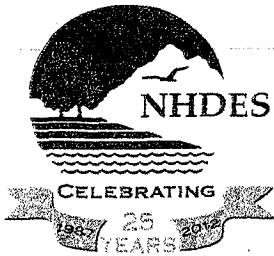
I-b. In adopting rules under subparagraph I(n), the department may incorporate by reference other state test methods and procedures that are referenced in the model rules of the Ozone Transport Commission (OTC) concerning consumer products, as defined in RSA 125-C:2, V-c.

II. The commissioner is authorized to issue subpoenas requiring the attendance of such witnesses and the production of such evidence and to administer such oaths and to take such testimony as he may deem necessary.

Source. 1979, 359:2. 1986, 202:8. 1996, 228:19, 104; 278:2, 3. 2001, 293:5. 2003, 137:3. 2004, 175:2, eff. May 27, 2004. 2005, 173:3, eff. June 29, 2005. 2008, 113:3, eff. Aug. 2, 2008. 2010, 183:6, eff. June 21, 2010.

COPY OF THE ACTUAL RULE

40 CFR Part 51, Appendix V, 2.1(d)



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner



*Celebrating 25 Years of Protecting
New Hampshire's Environment*

May 9, 2013

Jill K. Sieveking, Director
Office of Legislative Services
c/o Division of Administrative Rules
25 Capitol Street
State House Annex, Room 219
Concord, New Hampshire 03301-6312

Re: Certification of Env-A 1900
Reference Document #10317

Dear Director Sieveking:

Pursuant to RSA 541-A:15, I-a, I hereby certify that the enclosed rules are the same in substance as the rules originally filed with the Office of Legislative Services, Division of Administrative Rules.

I further certify that the enclosed rules, as edited for format by the Division of Administrative Rules, is the official version of these rules which this agency is required to publish in an 8 1/2 x 11 inch loose-leaf format as part of the New Hampshire Code of Administrative Rules, under Chapter 5 of the *New Hampshire Drafting and Procedure Manual for Administrative Rules* and RSA 541-A:15, I.

Sincerely,

Thomas S. Burack
Commissioner

Enclosure

cc: Gretchen Hamel, DES Legal Unit
DES Public Information Center

cc: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Karla McManus, DES ARD

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

CHAPTER Env-A 1900 INCINERATORS AND WOOD WASTE BURNERS

Statutory Authority: RSA 125-C:4; RSA 125-C:6, II

PART Env-A 1901 PURPOSE AND APPLICABILITY

Env-A 1901.01 Purpose. The purpose of this chapter is to establish emission standards and operating practices for incinerators that are not specifically regulated pursuant to federal incinerator or waste combustor standards or any other chapter, part, or section of this subtitle.

Source. #6483-B, eff 4-1-97 (formerly Env-A 1201); ss by #8294, eff 2-26-05; ss by #10317, eff 4-23-13

Env-A 1901.02 Applicability.

(a) Except as provided in (b), below, this chapter shall apply to the owner or operator of any incinerator.

(b) This chapter shall not apply to the owner or operator of an incinerator that is subject to rules or plans authorized by and adopted in accordance with Section 129 of the Clean Air Act.

Source. #10317, eff 4-23-13 (from Env-A 1902.01)

PART Env-A 1902 EMISSION STANDARDS FOR INCINERATORS

Env-A 1902.01 Visible Emission Standards.

(a) The owner or operator of an incinerator shall not allow average visible emissions to exceed 20 percent opacity for any continuous 6-minute period.

(b) Opacity shall be determined in accordance with Env-A 807.

Source. #6483-B, eff 4-1-97 (formerly Env-A 1201); ss by #8294, eff 2-26-05; ss by #10317, eff 4-23-13

Env-A 1902.02 Affirmative Defenses. An owner or operator against whom a malfunction-based violation of Env-A 1902.01(a) is alleged in a penalty action may raise an affirmative defense as specified in Env-A 2103.03.

Source. #8294, eff 2-26-05; ss by #10317, eff 4-23-13

Env-A 1902.03 Particulate Matter Emission Standards.

(a) The owner or operator of an incinerator shall not allow the incinerator to emit more than 0.675 grams per dry standard cubic meter (g/dscm), equivalent to 0.3 grains per dry standard cubic foot (grains/dscf), corrected to 7 percent oxygen (O₂).

(b) The particulate matter emission rate shall be determined in accordance with Env-A 802.02.

Source. #8294, eff 2-26-05; ss by #10317, eff 4-23-13 (from Env-A 1904.01)

NEW HAMPSHIRE CODE OF ADMINISTRATIVE RULES

PART Env-A 1903 POSTING AND OPERATOR REQUIREMENTS

Env-A 1903.01 Name Plate and Instruction Posting Requirements

(a) The owner or operator of an incinerator shall install the manufacturer's name plate which lists the device's model number and rated capacity and the types of waste for which the device is designed, in a conspicuous place on the device.

(b) The owner or operator of an incinerator shall post detailed instructions for the operation of the device in a conspicuous place near the device.

Source. #6483-B, eff 4-1-97 (formerly Env-A 1201); ss by #8294, eff 2-26-05; ss by #10317, eff 4-23-13 (from Env-A 1906.01)

Env-A 1903.02 Trained and Competent Operator Required. The owner or operator of an incinerator shall designate an individual who has been trained and is competent in the operation of the incinerator to be in charge of the device.

Source. #10317, eff 4-23-13 (from Env-A 1906.02)

Appendix

Rule Section(s)	State Statute Implemented
Env-A 1901 through Env-A 1903	RSA 125-C:6, II

**EVIDENCE THAT NEW HAMPSHIRE FOLLOWED ALL
PROCEDURAL REQUIREMENTS**

40 CFR Part 51, Appendix V, 2.1(e)

REQUEST FOR FISCAL IMPACT STATEMENT

STATE OF NEW HAMPSHIRE

DATE February 1, 2013

FROM Thomas S. Burack
Commissioner

AT (OFFICE) DES

SUBJECT Request for Fiscal Impact Statement

To Legislative Budget Assistant

In accordance with NH RSA 541-A:5, enclosed please find a Request for Fiscal Impact Statement and a copy of the corresponding administrative rules for the following:

Env-A 1900: Incinerators (n/k/a Incinerators and Wood Waste Burners)

Please fax the Fiscal Impact Statement to Gretchen Hamel at 271-8805.

If you have any questions, please contact Gretchen Hamel at 271-3137.

cc: Gretchen Hamel, Administrator, DES Legal Unit

ec: Karla McManus, ARD Planning and Rules Manager

**OFFICE OF LEGISLATIVE BUDGET ASSISTANT
REQUEST FOR FISCAL IMPACT STATEMENT (FIS)**

FIS Number _____	Rule Number _____	Env-A 1900
1. Agency Name & Address: Department of Environmental Services 29 Hazen Drive P.O. Box. 95 Concord, NH 03302-0095	2. RSA Authority:	RSA 125-C:4, I(a)
	3. Federal Authority:	N/A
	4. Type of Action:	
	Adoption	_____
	Amendment	_____
	Repeal	_____
	Readoption	_____
	Readoption w/amendment	X
	Interim rule	_____
	5. Have the rules expired?	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
	Date Expired:	_____

6. Short Title: Incinerators (n/k/a Incinerators and Wood Waste Burners)

7. Contact Person:

Name: Gretchen Hamel	Title: Administrator, Legal Unit
Address: Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	Phone #: 271-3137 Fax #: 271-8805

(1) Summarize the rule.

The existing rules, Env-A 1900, provide emission standards for incinerators that are not otherwise regulated under federal rules. Env-A 1900 is proposed to be readopted because it is scheduled to expire on February 26, 2013. Specifically, sections pertaining to incinerators that are now subject to more stringent federal standards have been removed, as have sections that are now covered by Env-A 1400, *Regulated Toxic Air Pollutants* (e.g., Hydrogen Chloride emission standards). The standard for allowable visible emissions for wood waste burners is proposed to be reduced from 40% opacity to 20% opacity so as to match the standard for all other incinerators, and the "automatic 6-minute exemption" has been replaced with the ability of the owner or operator to raise affirmative defenses. Reasonable options exist for incineration or alternate disposal of wood waste, so allowing the continued use of inefficient, obsolete technology (e.g., teepee-style wood waste burners) that produce visible emissions over 20% is not appropriate. The proposed rules will be clearer than the existing rules, which will benefit anyone who is using the rules. Readopting these rules will benefit public health and the environment by controlling the emissions from incinerators, mainly particulate matter. Particulate matter contains microscopic solids or liquid droplets that are so small that they can get deep into the lungs, and numerous scientific studies have linked particle pollution exposure to a variety of serious health problems.

In a companion rulemaking, the definition of incinerator, Env-A 101.104, is being amended to include wood waste burners.

(2) Is the cost associated with this rule mandated by the rule or by state statute? If the cost is mandated by statute, then the rule itself may not have a cost or benefit associated with it. Please state either the statute or chapter law that is instigating this rule.

There are no costs associated with these rules because even if the existing rules were allowed to expire, affected sources would still be required to comply with the requirements of the federal rule that incorporates it at 40 CFR §52.1520. The proposed rules are being adopted pursuant to RSA 125-C:4, I(a) to implement RSA 125-C:6, II.

REQUEST FOR FISCAL IMPACT STATEMENT (FIS) – Page 2

- (3) *Compare the cost of the proposed rule with the cost of the existing rule, if there is an existing rule.*

There is no difference in cost between the proposed rules and the existing rules. The only substantive revision to the rules is to the standard for allowable visible emissions for wood waste burners, which is proposed to be reduced from 40% opacity to 20% opacity so as to match the standard for all other incinerators, and no wood waste burners using obsolete technology that causes their visible emissions to exceed 20% opacity are known to be operating in the state. Further, reasonable options exist for incineration or alternate disposal of wood waste.

- (4) *Describe the costs and benefits to the state general fund which would result from this rule.*

There will be no costs or benefits to the state general fund as a result of the proposed rules.

- (5) *Explain and cite the federal mandate for the proposed rule, if there is such a mandate. How would the mandate affect state funds?*

There is no federal mandate for the proposed rules. However, the existing rules are part of the State Implementation Plan (SIP), which has been approved by the U.S. Environmental Protection Agency pursuant to Section 110 of the Clean Air Act, 42 U.S.C. §7410. The State would be in violation of the SIP and would potentially be subject to federal sanctions if it allowed Env-A 1900 to expire as scheduled on Feb. 26, 2013.

- (6) *Describe the cost and benefits to any state special fund which would result.*

There will be no costs or benefits to any state special fund as a result of the proposed rules.

- (7) *Describe the costs and benefits to the political subdivisions of the state.*

The proposed rules will not impose any costs on or provide any direct financial benefits to political subdivisions of the state.

- (8) *Describe the costs and benefits to the citizens of the state.*

The proposed rules will not impose any costs on or provide any direct financial benefits to citizens of the state. Citizens are expected to benefit by incurring reduced health care costs over those that would be incurred if particulate emissions were not controlled.

- (9) *Describe the costs and benefits to any independently owned business, including a description of the specific reporting and recordkeeping requirements upon those employing fewer than 10 employees.*

The proposed rules will not impose any costs on or provide any direct financial benefits to any independently owned businesses.

The proposed rules will not change any existing reporting or recordkeeping requirements.

Readopt with amendment Env-A 1900, eff. 2-26-05 (doc #8294), to read as follows:

CHAPTER Env-A 1900 ~~INCINERATORS AND WOOD WASTE BURNERS~~

Statutory Authority: RSA 125-C:4; RSA 125-C:6, II

PART Env-A 1901 ***PURPOSE AND APPLICABILITY***

Env-A 1901.01 Purpose. The purpose of this chapter is to ~~regulate the operation and modification of new and existing~~ ***establish emission standards and operating practices for incinerators and wood waste burners that are not specifically regulated pursuant to federal incinerator or waste combustor standards or any other chapter, part, or section of this subtitle.***

PART ~~Env-A 1902~~ ***APPLICABILITY, EXEMPTIONS, AND REFERENCES***

~~Env-A 1902.01~~ ***1901.02*** Applicability.

(a) Except as provided in (b), below, this chapter shall apply to the owner or operator of: ***any incinerator.***

- (1) ~~An incinerator required to obtain a permit pursuant to Env-A 607.01, Env-A 608.01, or Env-A 609.01; or~~
- (2) ~~A wood waste burner.~~

(b) This chapter shall not apply to the owner or operator of: ***an incinerator that is subject to rules or plans authorized by and adopted in accordance with Section 129 of the Clean Air Act.***

- (1) ~~An incinerator combusting hazardous waste subject to 40 CFR 264, Subpart O, including all revisions and amendments through April 1, 1983;~~
- (2) ~~An incinerator subject to 40 CFR 60, Subpart E;~~
- (3) ~~A municipal waste combustor subject to 40 CFR 60, Subpart Ea or 40 CFR 60, Subpart Eb; or~~
- (4) ~~An incinerator combusting sewage sludge subject to 40 CFR 60, Subpart O.~~

~~Env-A 1902.02~~ Exemptions.

(a) ~~The owner or operator of a municipal wood waste burner shall be exempt from other provisions of Env-A 1900 provided that the owner or operator complies with the provision established for incinerators as specified in Env-A 1903.01(a) and Env-A 1904.01, below.~~

(b) The owner or operator of the following types of incinerators shall comply with the requirements of Env-A 1905.01 but shall be exempt from all other provisions of this chapter:

- (1) ~~A municipal waste combustor subject to 40 CFR 60, Subpart BBBB as incorporated in Env-A 3300;~~
- (2) ~~A commercial and industrial solid waste incinerator subject to 40 CFR 60, Subpart DDDD as incorporated in Env-A 3400; or~~
- (3) ~~A hospital/medical/infectious waste incinerator subject to 40 CFR 60, Subpart Ee as incorporated in Env-A 3500.~~

~~Env-A 1902.03~~ References. For the purpose of this chapter, unless otherwise specified, the July 1, 2004 edition of title 40 of the Code of Federal Regulations (CFR) shall control all references to 40 CFR 264.

PART ~~Env-A 1903~~ ***1902*** ***VISIBLE EMISSION STANDARDS FOR INCINERATORS AND WOOD WASTE BURNERS***

~~Env-A 1903~~ ***1902.01*** Visible Emission Standards for Incinerators and Wood Waste Burners.

(a) For incinerators, ~~The~~ owner or operator ***of an incinerator*** shall not allow average visible emissions to exceed 20 percent (%) opacity for any continuous 6-minute period, ~~except for one period of 6~~

~~continuous minutes in any 60 minute period during startup, shutdown, or malfunction.~~

~~(b) For wood waste burners, the owner or operator shall not allow average visible emissions to exceed 40% opacity for any continuous 6 minute period, except for one period of 6 continuous minutes in any 60 minute period during startup, shutdown, or malfunction.~~

~~(eb) Opacity shall be determined in accordance with Env-A 807.~~

Env-A 1902.02 Affirmative Defenses. An owner or operator against whom a violation of Env-A 1902.01(a) is alleged may raise an affirmative defense as specified in Env-A 2103.03.

~~PART Env-A 1904 PARTICULATE MATTER EMISSION STANDARDS FOR INCINERATORS AND WOOD WASTE BURNERS~~

~~Env-A 1904.01-1902.03 Particulate Matter Emission Standards for Incinerators.~~

~~(a) For an incinerator with an input capacity of less than or equal to 90.72 kilograms per hour (kg/hr) (200 pounds per hour (lb/hr)), the owner or operator of an incinerator shall not allow the incinerator to emit more than 0.675 grams per dry standard cubic meter (g/dscm) equivalent to (0.3 grains per dry standard cubic foot (grains/dscf)), of dry flue gas corrected to 12 % of carbon dioxide (CO₂), 7 percent oxygen (O₂).~~

~~(b) The particulate matter emission rate shall be determined without the contribution of CO₂ from auxiliary fuel in accordance with Env-A 802.02.~~

~~(b) Except as provided in (c), below, for an incinerator with an input capacity of greater than 90.72 kg/hr (200 lb/hr), the owner or operator shall not allow the incinerator to emit more than 0.45 g/dscm (0.2 grains/scf), of dry flue gas corrected to 12% CO₂, without the contribution of CO₂ from auxiliary fuel in accordance with Env-A 802.02.~~

~~(c) For an incinerator installed after August 17, 1971 with an input capacity of greater than or equal to 1,875 kg/hr (4,134 lb/hr), the incinerator shall comply with the requirements of 40 CFR 60, Subpart E rather than the requirement specified in (b), above.~~

~~Env-A 1904.02 Particulate Matter Emission Standards for Wood Waste Burners. For wood waste burners, the owner or operator shall not allow particulate matter to be discharged into the ambient air from any waste burner which exceeds 0.675 g/dscm, (0.3 grains/ft³), of dry flue gas corrected to 12% CO₂, without contribution of CO₂ from an auxiliary fuel in accordance with Env-A 802.02.~~

~~PART Env-A 1905 HYDROGEN CHLORIDE EMISSION STANDARDS FOR INCINERATORS~~

~~Env-A 1905.01 Hydrogen Chloride (HCl) Emission Standards for Incinerators.~~

~~(a) For installations completed on or after January 1, 1986, the owner or operator shall comply with the HCl emission standards in (c), below, if:~~

- ~~(1) The incinerator module has a design throughput capacity of greater than or equal to 4,000 lb/hr (48 tons per day (tons/day));~~
- ~~(2) The incinerator facility consists of multiple modules, having an aggregate design throughput of greater than or equal to 8,333 lb/hr (100 tons/day); and~~
- ~~(3) The incinerator burns Type 5 or 6 waste, regardless of size.~~

~~(b) For installations completed prior to January 1, 1986, the owner or operator shall comply with the HCl emission standards in (c), below, if:~~

- ~~(1) The incinerator module has a design throughput capacity of greater than or equal to 4,000 lb/hr (48 tons/day); and~~

- (2) ~~The incinerator facility consists of multiple modules, having an aggregate design throughput of greater than or equal to 12,500 lb/hr (150 tons/day).~~
- (c) ~~The owner or operator of an incinerator meeting the requirements of (a) or (b), above, shall comply with the following HCl emission standards, based on a 3-run stack test using a method approved by the department:~~
- (1) ~~Average emission level of 50 parts per million dry volume (ppm-dv) at 7% oxygen (O₂); or~~
- (2) ~~90% HCl removal efficiency, whichever is less stringent.~~
- (d) ~~The owner or operator of an incinerator burning solely type 7 waste shall be exempt from the HCl emission standards in (c), above.~~

PART Env-A 1906-1903 POSTING AND OPERATOR REQUIREMENTS

Env-A 1906-1903.01 Name Plate and Instruction Posting Requirements.

- (a) The owner or operator of an incinerator ~~or wood waste burner~~ shall install the manufacturer's name plate ~~in a conspicuous place on the device, giving which lists the device's~~ model number, ***and*** rated capacity, and the types of waste for which the device is designed, ***in a conspicuous place on the device.***
- (b) The owner or operator of an incinerator ~~or wood waste burner~~ shall post detailed instructions for the operation of the device in a conspicuous place near the device.

Env-A 1906-1903.02 Trained and Competent Operator Required. The owner or operator of an incinerator ~~or wood waste burner~~ shall have an individual, ***who has been*** trained and ***is*** competent in the operation of the incinerator, in charge of the ~~stationary source device~~.

Appendix

Rule Sections	State Statutes Implemented
Env-A 1901 through Env-A 1903	RSA 125-C:6, II

FISCAL IMPACT STATEMENT

LBAO
FIS 13:012
02/08/13

Fiscal Impact Statement for Department of Environmental Services rules governing Incinerators (n/k/a Incinerators and Wood Waste Burners). [Env-A 1900]

1. Comparison of the costs of the proposed rule(s) to the existing rule(s):

There is no difference in cost when comparing the proposed rules to the existing rules.

2. Cite the Federal mandate. Identify the impact on state funds:

No federal mandate, no impact on state funds. The existing rules are part of the State Implementation Plan approved by the US Environmental Protection Agency pursuant to Section 110 of the Clean Air Act (42 U.S.C. § 7410). If the current rules expire and the proposed rules are not adopted, the state would be in violation of the State Implementation Plan and would potentially be subject to federal sanctions.

3. Cost and benefits of the proposed rule(s):

A. To State general or State special funds:

None.

B. To State citizens and political subdivisions:

None.

C. To independently owned businesses:

None.

RULEMAKING NOTICE FILING

STATE OF NEW HAMPSHIRE

DATE February 8, 2013

FROM Thomas S. Burack
Commissioner

AT (OFFICE) DES

SUBJECT Rulemaking Notice

TO Office of Legislative Services
Division of Administrative Rules

Please accept for filing the enclosed Rulemaking Notice for the following rules:

Env-A 1900: Incinerators (nka Incinerators and Wood Waste Burners)

Questions from OLS regarding the Rulemaking Notice should be directed to Gretchen Hamel at 271-3137.

Questions from the public regarding the proposed rules, public hearing, or public comment period should be directed to Karla McManus at 271-6854.

Enclosures

cc: Gretchen Hamel, DES Legal Unit Administrator

ec: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Karla McManus, DES ARD Planning and Rules Manager
ARD Distribution list

RULEMAKING NOTICE

Notice Number	Rule Number	Env-A 1900
1. Agency Name & Address:	2. RSA Authority:	RSA 125-C:4, I(a)
NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	3. Federal Authority:	N/A
	4. Type of Action:	
	Adoption	_____
	Amendment	_____
	Repeal	_____
	Readoption	_____
	Readoption w/amendment	X

5. Short Title: Incinerators (n/k/a Incinerators and Wood Waste Burners)

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules, Env-A 1900, provide emission standards for incinerators that are not otherwise regulated under federal rules. Env-A 1900 is proposed to be readopted because it is scheduled to expire on February 26, 2013.* Specifically, sections pertaining to incinerators that are now subject to more stringent federal standards have been removed, as have sections that are now covered by Env-A 1400, *Regulated Toxic Air Pollutants* (e.g., Hydrogen Chloride emission standards). The standard for allowable visible emissions for wood waste burners is proposed to be reduced from 40% opacity to match the standard for all other incinerators, which is 20% opacity, and the "automatic 6-minute exemption" has been replaced with the ability of the owner or operator to raise affirmative defenses. Reasonable options exist for incineration or alternate disposal of wood waste, so allowing the continued use of inefficient, obsolete technology (e.g., teepee-style wood waste burners) that produce visible emissions over 20% is not appropriate. The proposed rules will be clearer than the existing rules, which will benefit anyone who is using the rules. Readopting these rules will benefit public health and the environment by controlling the emissions from incinerators, mainly particulate matter. Particulate matter contains microscopic solids or liquid droplets that are so small that they can get deep into the lungs, and numerous scientific studies have linked particle pollution exposure to a variety of serious health problems.

***Pursuant to RSA 541-A:14-a, the existing rules will continue in effect until the proposed rules are adopted and effective, subject to certain exceptions that the Department does not expect to occur.**

In a companion rulemaking, the definition of incinerator, Env-A 101.104, is being amended to include wood waste burners.

6. (b) Brief description of the groups affected:

The rules affect owners and operators of incinerators that are not specifically regulated pursuant to federal incinerator or waste combustor standards in Env-A 500, Env-A 3300 or Env-A 4300.

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented
Env-A 1901 through Env-A 1903	RSA 125-C:6, II

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Karla McManus	Title:	Planning and Rules Manager
Address:	NH Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-6854
		Fax#:	(603) 271-1381
		E-mail:	Karla.McManus@des.nh.gov

RULEMAKING NOTICE - Page 2

The rules also can be viewed in PDF at
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-
800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, March 29, 2013**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, March 22, 2013 at 9:30 am.**

Place: **Room 110, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS #_, dated _:

11. Statement Relative to Part I, Article 28-a of the N.H. Constitution:

None of the sources affected by these rules is owned by a political subdivision. Accordingly, the proposed rules do not violate Part I, Article 28-a of the New Hampshire Constitution because they do not assign any new, modified, or expanded programs or responsibilities to political subdivisions of the state in such a way as to necessitate local expenditures.

RULEMAKING REGISTER



NEW HAMPSHIRE RULEMAKING REGISTER

OFFICE OF LEGISLATIVE SERVICES

ROOM 219, STATE HOUSE ANNEX

25 CAPITOL STREET

CONCORD, NEW HAMPSHIRE 03301-6312

Tel. (603) 271-3680

Website: www.gencourt.state.nh.us/rules/index.html

TDD Access:

Relay NH 1-800-735-2964

Fax (603) 271-7871

VOLUME XXXIII, Number 7, February 14, 2013

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NOTE: POSSIBLE RULE EXTENSION

If the proposed rules contain existing, regular rules being readopted or readopted with amendments, and are not adopted and effective until after the expiration date(s) of the existing rules(s), then the existing rules will nevertheless continue in effect pursuant to RSA 541-A:14-a until the proposed rules are adopted and effective.

2. COMMITTEE (JLCAR)

REGULAR MEETING **Friday, February 15, 2013 9:00 a.m.**
Rooms 305/307, Legislative Office Building

CONTINUED MEETING: **Friday, March 1, 2013 9:00 a.m.**
Rooms 305/307, Legislative Office Building

JLCAR MEETING DATES AND RELATED FILING DEADLINES JANUARY-JUNE, 2013

The JLCAR has voted to hold its regularly scheduled meetings for January through June, 2013 on the third Friday of the month as listed below. The minimum 14-day "deadline" prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Fridays to address items postponed from the prior regular meetings.

Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
February 1	February 15	March 1
March 1	March 15	April 5
April 5	April 19	May 3
May 3	May 17	June 7
June 7	June 21	June 28

NEW HAMPSHIRE RULEMAKING REGISTER

Notices of Proposed Rules

<u>Notice Number</u>	<u>Rule Number</u>	<u>Agency and Short Title of Rule</u>	<u>Page No.</u>
2013-13	Env-A 101.104	Department of Environmental Services Air Related Programs Definition of Incinerator.	1
2013-14	Env-A 1900	Department of Environmental Services Air Related Programs Incinerators (n/k/a Incinerators and Wood Waste Burners).	3

JLCAR MEETING DATES AND RELATED FILING DEADLINES JULY-DECEMBER, 2013

The JLCAR has voted to hold its regularly scheduled monthly meetings for July through December, 2013 on the third Thursdays listed below. The minimum 14-day "deadline" prior to the regular JLCAR meeting is listed for agencies to file final proposals or proposed interim rules for placement on the JLCAR agenda pursuant to RSA 541-A:12, I and RSA 541-A:19, V. The JLCAR has also scheduled continued meetings as listed below on select Thursdays to address any items postponed from the prior regular meetings.

Regular Meeting Filing Deadline	Regular Meeting Date	Continued Meeting Date
July 3 (Wednesday)	July 18	August 1
August 1	August 15	September 5
September 5	September 19	October 3
October 3	October 17	November 7
November 7	November 21	December 5
December 5	December 19	None

Notice Number	2013-14	Rule Number	Env-A 1900
1. Agency Name & Address:	2. RSA Authority: RSA 125-C:4, I(a)		
NH Department of Environmental Services	3. Federal Authority: N/A		
29 Hazen Drive	4. Type of Action:		
P.O. Box 95	Adoption		
Concord, NH 03302-0095	Amendment		
	Repeal		
	Readoption		
	Readoption w/amendment X		

5. Short Title: Incinerators (n/k/a Incinerators and Wood Waste Burners)

6. (a) Summary of what the rule says and of any proposed amendments:

The existing rules, Env-A 1900, provide emission standards for incinerators that are not otherwise regulated under federal rules. Env-A 1900 is proposed to be readopted because it is scheduled to expire on February 26, 2013.* Specifically, sections pertaining to incinerators that are now subject to more stringent federal standards have been removed, as have sections that are now covered by Env-A 1400, *Regulated Toxic Air Pollutants* (e.g., Hydrogen Chloride emission standards). The standard for allowable visible emissions for wood waste burners is proposed to be reduced from 40% opacity to match the standard for all other incinerators, which is 20% opacity, and the "automatic 6-minute exemption" has been replaced with the ability of the owner or operator to raise affirmative defenses. Reasonable options exist for incineration or alternate disposal of wood waste, so allowing the continued use of inefficient, obsolete technology (e.g., teepee-style wood waste burners) that produce visible emissions over 20% is not appropriate. The proposed rules will be clearer than the existing rules, which will benefit anyone who is using the rules. Readopting these rules will benefit public health and the environment by controlling the emissions from incinerators, mainly particulate matter. Particulate matter contains microscopic solids or liquid droplets that are so small that they can get deep into the lungs, and numerous scientific studies have linked particle pollution exposure to a variety of serious health problems.

*Pursuant to RSA 541-A:14-a, the existing rules will continue in effect until the proposed rules are adopted and effective, subject to certain exceptions that the Department does not expect to occur.

In a companion rulemaking, the definition of incinerator, Env-A 101.104, is being amended to include wood waste burners.

6. (b) Brief description of the groups affected:

The rules affect owners and operators of incinerators that are not specifically regulated pursuant to federal incinerator or waste combustor standards in Env-A 500, Env-A 3300 or Env-A 4300.

6. (c) Specific section(s) of state statute or federal statute or regulation which the rule is intended to implement:

Rule Section(s)	State Statute(s) Implemented
Env-A 1901 through Env-A 1903	RSA 125-C:6, II

7. Contact person for copies and questions including requests to accommodate persons with disabilities:

Name:	Karla McManus	Title:	Planning and Rules Manager
Address:	NH Dept. of Environmental Services 29 Hazen Drive; P.O. Box 95 Concord, NH 03302-0095	Phone #:	(603) 271-6854
		Fax#:	(603) 271-1381
		E-mail:	Karla.McManus@des.nh.gov

The rules also can be viewed in PDF at
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-800-735-2964 or dial 711 (in NH)

NN 2013-14 Continued

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, March 29, 2013**

☒ Fax☒ E-mail☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, March 22, 2013 at 9:30 am.**

Place: **Room 110, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 13:012, dated 02/08/13:

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules.

2. **Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds. The existing rules are part of the State Implementation Plan approved by the US Environmental Protection Agency pursuant to Section 110 of the Clean Air Act (42 U.S.C. § 7410). If the current rules expire and the proposed rules are not adopted, the state would be in violation of the State Implementation Plan and would potentially be subject to federal sanctions.

3. **Cost and benefits of the proposed rule(s):**

- A. **To State general or State special funds:**

None.

- B. **To State citizens and political subdivisions:**

None.

- C. **To independently owned businesses:**

None.

11. **Statement Relative to Part I, Article 28-a of the N.H. Constitution:**

None of the sources affected by these rules is owned by a political subdivision. Accordingly, the proposed rules do not violate Part I, Article 28-a of the New Hampshire Constitution because they do not assign any new, modified, or expanded programs or responsibilities to political subdivisions of the state in such a way as to necessitate local expenditures.

ANNOTATIONS TO INITIAL PROPOSAL FROM THE OFFICE OF
LEGISLATIVE SERVICES

Readopt with amendment Env-A 1900, eff. 2-26-05 (doc #8294), to read as follows:

CHAPTER Env-A 1900 INCINERATORS AND WOOD WASTE BURNERS

Statutory Authority: RSA 125-C:4; RSA 125-C:6, II

PART Env-A 1901 PURPOSE AND APPLICABILITY

Env-A 1901.01 Purpose. The purpose of this chapter is to ~~regulate the operation and modification of new and existing~~ *establish emission standards and operating practices for* incinerators and ~~wood waste burners that are not specifically regulated pursuant to federal incinerator or waste combustor standards or any other chapter, part, or section of this subtitle.~~

PART Env-A 1902 APPLICABILITY, EXEMPTIONS, AND REFERENCES

Env-A ~~1902.01~~ 1901.02 Applicability.

(a) Except as provided in (b), below, this chapter shall apply to the owner or operator of: ~~any incinerator.~~

- ~~(1) An incinerator required to obtain a permit pursuant to Env-A 607.01, Env-A 608.01, or Env-A 609.01; or~~
- ~~(2) A wood waste burner.~~

(b) This chapter shall not apply to the owner or operator of: ~~an incinerator that is subject to rules or plans authorized by and adopted in accordance with Section 129 of the Clean Air Act.~~

- ~~(1) An incinerator combusting hazardous waste subject to 40 CFR 264, Subpart O, including all revisions and amendments through April 1, 1983;~~
- ~~(2) An incinerator subject to 40 CFR 60, Subpart E;~~
- ~~(3) A municipal waste combustor subject to 40 CFR 60, Subpart Ea or 40 CFR 60, Subpart Eb; or~~
- ~~(4) An incinerator combusting sewage sludge subject to 40 CFR 60, Subpart O.~~

Env-A 1902.02 Exemptions.

(a) The owner or operator of a municipal wood waste burner shall be exempt from other provisions of Env-A 1900 provided that the owner or operator complies with the provision established for incinerators as specified in Env-A 1903.01(a) and Env-A 1904.01, below.

(b) The owner or operator of the following types of incinerators shall comply with the requirements of Env-A 1905.01 but shall be exempt from all other provisions of this chapter:

- ~~(1) A municipal waste combustor subject to 40 CFR 60, Subpart BBBB as incorporated in Env-A 3300;~~
- ~~(2) A commercial and industrial solid waste incinerator subject to 40 CFR 60, Subpart DDDD as incorporated in Env-A 3400; or~~
- ~~(3) A hospital/medical/infectious waste incinerator subject to 40 CFR 60, Subpart Ee as incorporated in Env-A 3500.~~

Env-A 1902.03 References. For the purpose of this chapter, unless otherwise specified, the July 1, 2004 edition of title 40 of the Code of Federal Regulations (CFR) shall control all references to 40 CFR 264.

PART Env-A ~~1903~~ 1902 VISIBLE EMISSION STANDARDS FOR INCINERATORS AND WOOD WASTE BURNERS

Env-A ~~1903~~ 1902.01 Visible Emission Standards for Incinerators and Wood Waste Burners.

(a) For incinerators, ~~The~~ owner or operator of *an incinerator* shall not allow average visible emissions to exceed 20 percent (%) opacity for any continuous 6-minute period, ~~except for one period of 6~~

~~continuous minutes in any 60 minute period during startup, shutdown, or malfunction.~~

(b) ~~For wood waste burners, the owner or operator shall not allow average visible emissions to exceed 40% opacity for any continuous 6 minute period, except for one period of 6 continuous minutes in any 60 minute period during startup, shutdown, or malfunction.~~

(eb) Opacity shall be determined in accordance with Env-A 807.

Env-A 1902.02 Affirmative Defenses. An owner or operator against whom a violation of Env-A 1902.01(a) is alleged may raise an affirmative defense as specified in Env-A 2103.03.

~~PART Env-A 1904 PARTICULATE MATTER EMISSION STANDARDS FOR INCINERATORS AND WOOD WASTE BURNERS~~

~~Env-A 1904.01-1902.03 Particulate Matter Emission Standards for Incinerators.~~

(a) ~~For an incinerator with an input capacity of less than or equal to 90.72 kilograms per hour (kg/hr) (200 pounds per hour (lb/hr)), the owner or operator of an incinerator shall not allow the incinerator to emit more than 0.675 grams per dry standard cubic meter (g/dscm), equivalent to (0.3 grains per dry standard cubic foot (grains/dscf)), of dry flue gas corrected to 12% of carbon dioxide (CO₂), 7 percent oxygen (O₂).~~

(b) ~~The particulate matter emission rate shall be determined without the contribution of CO₂ from auxiliary fuel in accordance with Env-A 802.02.~~

(b) ~~Except as provided in (c), below, for an incinerator with an input capacity of greater than 90.72 kg/hr (200 lb/hr), the owner or operator shall not allow the incinerator to emit more than 0.45 g/dscm (0.2 grains/scf), of dry flue gas corrected to 12% CO₂, without the contribution of CO₂ from auxiliary fuel in accordance with Env A 802.02.~~

(c) ~~For an incinerator installed after August 17, 1971 with an input capacity of greater than or equal to 1,875 kg/hr (4,134 lb/hr), the incinerator shall comply with the requirements of 40 CFR 60, Subpart E rather than the requirement specified in (b), above.~~

~~Env-A 1904.02 Particulate Matter Emission Standards for Wood Waste Burners. For wood waste burners, the owner or operator shall not allow particulate matter to be discharged into the ambient air from any waste burner which exceeds 0.675 g/dscm, (0.3 grains/ft³), of dry flue gas corrected to 12% CO₂, without contribution of CO₂ from an auxiliary fuel in accordance with Env A 802.02.~~

~~PART Env-A 1905 HYDROGEN CHLORIDE EMISSION STANDARDS FOR INCINERATORS~~

~~Env-A 1905.01 Hydrogen Chloride (HCl) Emission Standards for Incinerators.~~

(a) ~~For installations completed on or after January 1, 1986, the owner or operator shall comply with the HCl emission standards in (c), below, if:~~

(1) ~~The incinerator module has a design throughput capacity of greater than or equal to 4,000 lb/hr (48 tons per day (tons/day));~~

(2) ~~The incinerator facility consists of multiple modules, having an aggregate design throughput of greater than or equal to 8,333 lb/hr (100 tons/day); and~~

(3) ~~The incinerator burns Type 5 or 6 waste, regardless of size.~~

(b) ~~For installations completed prior to January 1, 1986, the owner or operator shall comply with the HCl emission standards in (c), below, if:~~

(1) ~~The incinerator module has a design throughput capacity of greater than or equal to 4,000 lb/hr (48 tons/day); and~~

- (2) ~~The incinerator facility consists of multiple modules, having an aggregate design throughput of greater than or equal to 12,500 lb/hr (150 tons/day).~~
- (c) ~~The owner or operator of an incinerator meeting the requirements of (a) or (b), above, shall comply with the following HCl emission standards, based on a 3-run stack test using a method approved by the department:~~
- (1) ~~Average emission level of 50 parts per million dry volume (ppm-dv) at 7% oxygen (O₂); or~~
- (2) ~~90% HCl removal efficiency, whichever is less stringent.~~
- (d) ~~The owner or operator of an incinerator burning solely type 7 waste shall be exempt from the HCl emission standards in (c), above.~~

Edit. Replace "and" with "its".

PART Env-A ~~1906-1903~~ POSTING AND OPERATOR REQUIREMENTS

Env-A ~~1906-1903.01~~ Name Plate and Instruction Posting Requirements.

(a) The owner or operator of an incinerator ~~or wood waste burner~~ shall install the manufacturer's name plate ~~in a conspicuous place on the device, giving which lists the device's model number, and rated capacity; and the types of waste for which the device is designed, in a conspicuous place on the device.~~

(b) The owner or operator of an incinerator ~~or wood waste burner~~ shall post detailed instructions for the operation of the device in a conspicuous place near the device.

Edit. Delete the shaded words.

Env-A ~~1906-1903.02~~ Trained and Competent Operator Required. The owner or operator of an incinerator ~~or wood waste burner~~ shall have an individual, *who has been* trained and *is* competent in the operation of the incinerator; in charge of the ~~stationary source device~~.


Appendix

Rule Sections	State Statutes Implemented
Env-A 1901 through Env-A 1903	RSA 125-C:6, II

FINAL PROPOSAL FILING

STATE OF NEW HAMPSHIRE

DATE April 5, 2013

FROM Thomas S. Burack 
Commissioner **AT (OFFICE)** DES

SUBJECT Final Proposal #2013-14

TO Office of Legislative Services
Division of Administrative Rules

In accordance with RSA 541-A:12, enclosed please find the Final Proposal Cover Sheet with attachments, including the corresponding rules, for the following:

Env-A 1900: Incinerators (nka Incinerators and Wood Waste Burners)

If you have any questions, please contact Gretchen Hamel at 271-3137.

Enclosures

cc: Gretchen Hamel, Administrator, DES Legal Unit

ec: Karla McManus, DES ARD Planning and Rules Manager

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2013-14

Rule Number Env-A 1900

1. Agency Name & Address:

NH Department of Environmental Services
29 Hazen Drive
P.O. Box 95
Concord, NH 03302-0095

2. RSA Authority: RSA 125-C:4, I(a)

3. Federal Authority: n/a

4. Type of Action:

- ☐ Adoption
☐ Amendment
☐ Repeal
☐ Readoption
☒ Readoption w/amendment

5. Short Title: Incinerators

6. Contact person for copies and questions:

Name: Karla McManus

Title: Planning and Rules Manager

Address: NH Dept. of Environmental Services
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

Phone #: (603) 271-6854

7. Yes ☐ No ☒ Agency requests Committee legal counsel review and delayed Committee review pursuant to RSA 541-A:12, I-a

8. The rulemaking notice appeared in the Rulemaking Register on February 14, 2013.

9. Yes ☐ N/A ☒ Agency notified policy committees, or House Speaker and Senate President, pursuant to RSA 541-A:10, I, because this is the first time this rule or its amendments have been proposed to implement newly-enacted state authority.

**SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET
AND 2 COPIES OF THE FOLLOWING:
(and numbered correspondingly)**

10. The "Final Proposal-Fixed Text", including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

11. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes ☒ N/A ☐ The "Final Proposal-Annotated Text" indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

13. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

Readopt with amendment Env-A 1900, eff. 2-26-05 (doc #8294), to read as follows:

CHAPTER Env-A 1900 INCINERATORS

Statutory Authority: RSA 125-C:4; RSA 125-C:6, II

PART Env-A 1901 PURPOSE AND APPLICABILITY

Env-A 1901.01 Purpose. The purpose of this chapter is to establish emission standards and operating practices for incinerators that are not specifically regulated pursuant to federal incinerator or waste combustor standards or any other chapter, part, or section of this subtitle.

Env-A 1901.02 Applicability.

(a) Except as provided in (b), below, this chapter shall apply to the owner or operator of any incinerator.

(b) This chapter shall not apply to the owner or operator of an incinerator that is subject to rules or plans authorized by and adopted in accordance with Section 129 of the Clean Air Act.

PART Env-A 1902 EMISSION STANDARDS FOR INCINERATORS

Env-A 1902.01 Visible Emission Standards.

(a) The owner or operator of an incinerator shall not allow average visible emissions to exceed 20 percent opacity for any continuous 6-minute period.

(b) Opacity shall be determined in accordance with Env-A 807.

Env-A 1902.02 Affirmative Defenses. An owner or operator against ~~whom~~ a ***malfunction-based*** violation of Env-A 1902.01(a) is alleged ***in a penalty action*** may raise an affirmative defense as specified in Env-A 2103.03.

Env-A 1902.03 Particulate Matter Emission Standards.

(a) The owner or operator of an incinerator shall not allow the incinerator to emit more than 0.675 grams per dry standard cubic meter (g/dscm), equivalent to 0.3 grains per dry standard cubic foot (grains/dscf), corrected to 7 percent oxygen (O₂).

(b) The particulate matter emission rate shall be determined in accordance with Env-A 802.02.

PART Env-A 1903 POSTING AND OPERATOR REQUIREMENTS

Env-A 1903.01 Name Plate and Instruction Posting Requirements.

(a) The owner or operator of an incinerator shall install the manufacturer's name plate which lists the device's model number and rated capacity and the types of waste for which the device is designed, in a conspicuous place on the device.

(b) The owner or operator of an incinerator shall post detailed instructions for the operation of the device in a conspicuous place near the device.

Env-A 1903.02 Trained and Competent Operator Required. The owner or operator of an incinerator shall ~~have designate~~ an individual who has been trained and is competent in the operation of the incinerator ***to be*** in charge of the device.

Appendix

Rule Sections	State Statutes Implemented
Env-A 1901 through Env-A 1903	RSA 125-C:6, II

Readopt with amendment Env-A 1900, eff. 2-26-05 (doc #8294), to read as follows:

CHAPTER Env-A 1900 INCINERATORS

Statutory Authority: RSA 125-C:4; RSA 125-C:6, II

PART Env-A 1901 PURPOSE AND APPLICABILITY

Env-A 1901.01 Purpose. The purpose of this chapter is to establish emission standards and operating practices for incinerators that are not specifically regulated pursuant to federal incinerator or waste combustor standards or any other chapter, part, or section of this subtitle.

Env-A 1901.02 Applicability.

(a) Except as provided in (b), below, this chapter shall apply to the owner or operator of any incinerator.

(b) This chapter shall not apply to the owner or operator of an incinerator that is subject to rules or plans authorized by and adopted in accordance with Section 129 of the Clean Air Act.

PART Env-A 1902 EMISSION STANDARDS FOR INCINERATORS

Env-A 1902.01 Visible Emission Standards.

(a) The owner or operator of an incinerator shall not allow average visible emissions to exceed 20 percent opacity for any continuous 6-minute period.

(b) Opacity shall be determined in accordance with Env-A 807.

Env-A 1902.02 Affirmative Defenses. An owner or operator against **whom** a malfunction-based violation of Env-A 1902.01(a) is alleged in a penalty action may raise an **affirmative** defense as specified in Env-A 2103.03.

Env-A 1902.03 Particulate Matter Emission Standards.

(a) The owner or operator of an incinerator shall not allow the incinerator to emit more than 0.675 grams per dry standard cubic meter (g/dscm), equivalent to 0.3 grains per dry standard cubic foot (grains/dscf), corrected to 7 percent oxygen (O₂).

(b) The particulate matter emission rate shall be determined in accordance with Env-A 802.02.

PART Env-A 1903 POSTING AND OPERATOR REQUIREMENTS

Env-A 1903.01 Name Plate and Instruction Posting Requirements.

(a) The owner or operator of an incinerator shall install the manufacturer's name plate which lists the device's model number and rated capacity and the types of waste for which the device is designed, in a conspicuous place on the device.

(b) The owner or operator of an incinerator shall post detailed instructions for the operation of the device in a conspicuous place near the device.

Env-A 1903.02 Trained and Competent Operator Required. The owner or operator of an incinerator shall designate an individual who has been trained and is competent in the operation of the incinerator to be in charge of the device.

Appendix

Rule Sections	State Statutes Implemented
Env-A 1901 through Env-A 1903	RSA 125-C:6, II

ANNOTATIONS TO THE FINAL PROPOSAL FROM THE OFFICE OF
LEGISLATIVE SERVICES

APR 05 2013

2013-14
4-5-13

COVER SHEET FOR FINAL PROPOSAL

Notice Number 2013-14 Rule Number Env-A 1900

1. Agency Name & Address: NH Department of Environmental Services 29 Hazen Drive P.O. Box 95 Concord, NH 03302-0095	2. RSA Authority: <u>RSA 125-C:4, I(a)</u> 3. Federal Authority: <u>n/a</u> 4. Type of Action: <input type="checkbox"/> Adoption <input type="checkbox"/> Amendment <input type="checkbox"/> Repeal <input type="checkbox"/> Readoption <input checked="" type="checkbox"/> Readoption w/amendment
---	---

5. Short Title: Incinerators

6. Contact person for copies and questions:
Name: Karla McManus Title: Planning and Rules Manager
Address: NH Dept. of Environmental Services Phone #: (603) 271-6854
29 Hazen Drive; P.O. Box 95
Concord, NH 03302-0095

7. Yes ☐ No ☒ Agency requests Committee legal counsel review and delayed Committee review pursuant to RSA 541-A:12, I-a

8. The rulemaking notice appeared in the Rulemaking Register on February 14, 2013.

9. Yes ☐ N/A ☒ Agency notified policy committees, or House Speaker and Senate President, pursuant to RSA 541-A:10, I, because this is the first time this rule or its amendments have been proposed to implement newly-enacted state authority.

SEE THE INSTRUCTIONS--PLEASE SUBMIT 2 COPIES OF THIS COVER SHEET
AND 2 COPIES OF THE FOLLOWING:
(and numbered correspondingly)

10. The "Final Proposal-Fixed Text", including the cross-reference table required by RSA 541-A:3-a, II as an appendix.

11. Yes ☐ N/A ☒ Incorporation by Reference Statement(s) because this rule incorporates a document or Internet content by reference for which an Incorporation by Reference Statement is required pursuant to RSA 541-A:12, III.

12. Yes ☒ N/A ☐ The "Final Proposal-Annotated Text" indicating how the proposed rule was changed because the text of the rule changed from the Initial Proposal pursuant to RSA 541-A:12, II(e).

13. Yes ☐ N/A ☒ The amended fiscal impact statement because the change to the text of the Initial Proposal affects the original fiscal impact statement (FIS) pursuant to RSA 541-A:5, VI.

RULEMAKING NOTICE - Page 2

The rules also can be viewed in PDF at
<http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>

TTY/TDD Access: Relay NH 1-
800-735-2964 or dial 711 (in NH)

8. Deadline for submission of materials in writing or, if practicable for the agency, in the electronic format specified: **4:00 p.m. on Friday, March 29, 2013**

☒ Fax

☒ E-mail

☐ Other format (specify):

9. Public hearing scheduled for:

Date and Time: **Friday, March 22, 2013 at 9:30 am.**

Place: **Room 110, DES Offices, 29 Hazen Drive, Concord NH**

10. Fiscal Impact Statement (Prepared by Legislative Budget Assistant): FIS # 13:012, dated 02/08/13:

1. **Comparison of the costs of the proposed rule(s) to the existing rule(s):**

There is no difference in cost when comparing the proposed rules to the existing rules.

2. **Cite the Federal mandate. Identify the impact on state funds:**

No federal mandate, no impact on state funds. The existing rules are part of the State Implementation Plan approved by the US Environmental Protection Agency pursuant to Section 110 of the Clean Air Act (42 U.S.C. § 7410). If the current rules expire and the proposed rules are not adopted, the state would be in violation of the State Implementation Plan and would potentially be subject to federal sanctions.

3. **Cost and benefits of the proposed rule(s):**

- A. **To State general or State special funds:**

None.

- B. **To State citizens and political subdivisions:**

None.

- C. **To independently owned businesses:**

None.

11. **Statement Relative to Part I, Article 28-a of the N.H. Constitution:**

None of the sources affected by these rules is owned by a political subdivision. Accordingly, the proposed rules do not violate Part I, Article 28-a of the New Hampshire Constitution because they do not assign any new, modified, or expanded programs or responsibilities to political subdivisions of the state in such a way as to necessitate local expenditures.

APPROVAL OF THE RULE BY THE JOINT LEGISLATIVE COMMITTEE ON
ADMINISTRATIVE RULES

✓ d b

STATE OF NEW HAMPSHIRE

JILL K. SIEVEKING
DIRECTOR



OFFICE OF LEGISLATIVE SERVICES

STATE HOUSE
107 NORTH MAIN STREET, ROOM 109
CONCORD, NEW HAMPSHIRE 03301-4951

April 19, 2013

NOTICE NO. 2013-14

RULE # Env-A 1900

RELATIVE TO: Incinerators (n/k/a Incinerators and Wood Waste Burners)

The Joint Legislative Committee on Administrative Rules has reviewed the Final Proposal on the above cited rule at its meeting on APRIL 19, 2013.

The Committee voted to approve the proposal. You may proceed to adopt the rules in the proposal and file them with the Office of Legislative Services, Administrative Rules. If the effective life of any existing, regular rules in your proposal was extended during the rulemaking proceeding pursuant to RSA 541-A:14-a, then all the rules in the proposal must be adopted within **30 days** of Committee approval. The rules also must be filed with an effective date not more than **60 days** from the date of filing. See Section 1.11 of Chapter 3 in the N.H. Drafting and Procedure Manual for Administrative Rules (Manual).

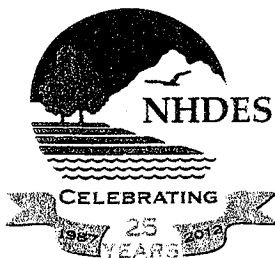
When filing the final rules, you are also required to file a cover letter indicating the date of final adoption and certifying the final rules are a true copy. See Section 2.21 of Chapter 3 in the Manual. The rules will become effective either at (1) 12:01 a.m. on the day after the filing, (2) 12:01 a.m. on the date specified in the cover letter to me when the rule is filed, or (3) such other date and time as specified in the cover letter, provided that the filing occurs before such effective date and time. Please send two (2) copies of the adopted rules.

Sincerely yours,

A handwritten signature in cursive script that reads "Jill K. Sieveking".

Jill K. Sieveking, Director
Office of Legislative Services

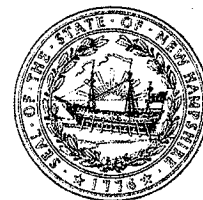
ADOPTED RULE



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



April 22, 2013

Jill K. Sieveking, Director
c/o OLS, Division of Administrative Rules
State House Annex, Room 219
Concord, NH 03301

Re: Adoption of Final Rules, FP #2013-14

Dear Director Sieveking:

Please be advised that I, as Commissioner of the Department of Environmental Services, have adopted the following rules:

Env-A 1900: Incinerators (fka Incinerators and Wood Waste Burners)

The Joint Legislative Committee on Administrative Rules approved these rules at its meeting on April 19, 2013.

A copy of the adopted rules is being filed electronically, concurrent with the e-filing of this adoption letter. The original, signed adoption letter is being sent separately by messenger mail for your records.

I, Thomas S. Burack, Commissioner of the Department of Environmental Services, hereby certify that the enclosed are true copies of the rules I have adopted.

Sincerely,

Thomas S. Burack
Commissioner

Enclosure

- cc: Gretchen Hamel, DES Legal Unit
Public Information and Permitting Office
- cc: K. Allen Brooks, Chief, AGO-Environmental Protection Bureau
Karla McManus, DES ARD Planning and Rules Manager

www.des.nh.gov

29 Hazen Drive • PO Box 95 • Concord, NH 03302-0095
(603) 271-3503 • TDD Access: Relay NH 1-800-735-2964

Readopt with amendment Env-A 1900, eff. 2-26-05 (doc #8294), to read as follows:

CHAPTER Env-A 1900 INCINERATORS

Statutory Authority: RSA 125-C:4; RSA 125-C:6, II

PART Env-A 1901 PURPOSE AND APPLICABILITY

Env-A 1901.01 Purpose. The purpose of this chapter is to establish emission standards and operating practices for incinerators that are not specifically regulated pursuant to federal incinerator or waste combustor standards or any other chapter, part, or section of this subtitle.

Env-A 1901.02 Applicability.

(a) Except as provided in (b), below, this chapter shall apply to the owner or operator of any incinerator.

(b) This chapter shall not apply to the owner or operator of an incinerator that is subject to rules or plans authorized by and adopted in accordance with Section 129 of the Clean Air Act.

PART Env-A 1902 EMISSION STANDARDS FOR INCINERATORS

Env-A 1902.01 Visible Emission Standards.

(a) The owner or operator of an incinerator shall not allow average visible emissions to exceed 20 percent opacity for any continuous 6-minute period.

(b) Opacity shall be determined in accordance with Env-A 807.

Env-A 1902.02 Affirmative Defenses. An owner or operator against whom a malfunction-based violation of Env-A 1902.01(a) is alleged in a penalty action may raise an affirmative defense as specified in Env-A 2103.03.

Env-A 1902.03 Particulate Matter Emission Standards.

(a) The owner or operator of an incinerator shall not allow the incinerator to emit more than 0.675 grams per dry standard cubic meter (g/dscm), equivalent to 0.3 grains per dry standard cubic foot (grains/dscf), corrected to 7 percent oxygen (O₂).

(b) The particulate matter emission rate shall be determined in accordance with Env-A 802.02.

PART Env-A 1903 POSTING AND OPERATOR REQUIREMENTS

Env-A 1903.01 Name Plate and Instruction Posting Requirements.

(a) The owner or operator of an incinerator shall install the manufacturer's name plate which lists the device's model number and rated capacity and the types of waste for which the device is designed, in a conspicuous place on the device.

(b) The owner or operator of an incinerator shall post detailed instructions for the operation of the device in a conspicuous place near the device.

Env-A 1903.02 Trained and Competent Operator Required. The owner or operator of an incinerator shall designate an individual who has been trained and is competent in the operation of the incinerator to be in charge of the device.

Appendix

Rule Sections	State Statutes Implemented
Env-A 1901 through Env-A 1903	RSA 125-C:6, II

EVIDENCE OF PUBLIC NOTICE

40 CFR Part 51, Appendix V, 2.1(f)

STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTA

STATE OF NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES AIR RESOURCES DIVISION
CONCORD, NH NOTICE OF PUBLIC HEARING In accordance with RSA 541-A:6 and N.H. Admin. Rule Env-A 204.01(b) and 40 CFR 51.102, notice is hereby given that the New Hampshire Department of Environmental Services, Air Resources Division (the Department), will hold a public hearing on proposed amendments to the NH Code of Administrative Rules and the State Implementation Plan on Friday, March 22, 2013. The public hearing will be held in Room 110, first floor of the offices of the Department, 29 Hazen Drive, Concord, NH. At 9:30 a.m. on Friday, March 22, 2013, the Department will receive testimony from the public concerning the proposed readoption with amendments of two rules, Env-A 1900 -Incinerators; and Env-A 101.104 - Definition of Incinerators. The existing rules, Env-A 1900, provide emission standards for incinerators that are not otherwise regulated under federal rules. Env-A 1900 is proposed to be readopted because it is scheduled to expire on February 26, 2013. Revisions are proposed to cover incinerators for which no specific federal rules apply and to delete sections pertaining to incinerators that are now subject to more stringent federal standards or are covered by other state rules. In a companion rulemaking, the definition of incinerator, Env-A 101.104, is being amended to include wood waste burners. Pursuant to RSA 541-A:14-a, I, the existing rules will continue in effect for the duration of this readoption proceeding. Testimony may be presented orally and/or in writing at the public hearing. The Department will receive written comments on the proposed rules until 4:00 p.m. on Friday, March 29, 2013. Please submit written comments to Karla McManus, Planning and Rules Manager, Air Resources Division, NH Department of Environmental Services, P.O. Box 95, Concord, NH 03302-0095, Fax (603) 271-7053 or e-mail at Karla.McManus@des.nh.gov. Copies of all documentation pertaining to rulemakings for all air rules are available for inspection at the offices of the Department at the address stated above. The proposed rule is also posted at <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>. Questions regarding the proposed rulemakings should be directed to Karla McManus at (603) 271-6854. Thomas S. Burack Commissioner NH Department of Environmental Services Dated: February 19, 2013

Appeared in: **The Union Leader** on Thursday, 02/21/2013

[Back](#)

Env-A 1900

UNION LEADER CORPORATION

**P O BOX 9513
MANCHESTER, NH 03108**

**0000059625
STATE OF NH-AIR RESOURCES COMM
VALERIE DAVID
PO BOX 95
CONCORD NH 03302-0095**

I hereby certify that the legal notice: (0000440820) PUB HEARING 3/22 9:30AM
was published in the New Hampshire Union Leader
printed at Manchester, NH by the Union Leader Corp.
On:
02/21/2013.

**State of N w Hampshire
Hillsborough County**

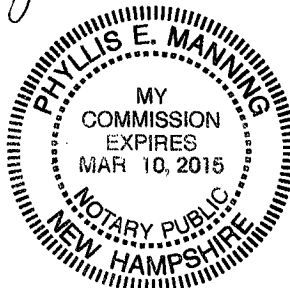
Subscribed and sworn to before me this

21

day of

February 2013

Phyllis E Manning
Notary Public

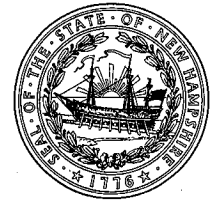


CERTIFICATION OF PUBLIC HEARING

40 CFR Part 51, Appendix V, 2.1(g)



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

June 7, 2013

I Hereby Certify:

That, in accordance with the provisions of NH RSA 541-A:11 and section 110(a) of the Clean Air Act, as amended, public notice was given specifying that a public hearing regarding the proposed readoption with amendments of Env-A 1900 of the NH Code of Administrative Rules was to be held on March 22, 2013 at 9:30 a.m. in room 110 of the offices of the New Hampshire Department of Environmental Services, Air Resource Division, 29 Hazen Drive, Concord, N.H. The notice was published at least 30 days prior to the date of such hearing in a newspaper of general circulation. The notice stated that copies of documentation regarding the readoption with amendment of Env-A 1900 of the NH Code of Administrative Rules could be examined at the Department's office or at: <http://des.nh.gov/organization/commissioner/legal/rulemaking/index.htm>.

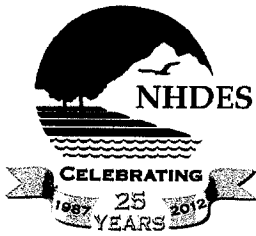
That the public hearing was held on March 22, 2013 at 9:30 a.m. in room 110 of the offices of the New Hampshire Department of Environmental Services, Air Resources Division, 29 Hazen Drive, Concord, NH, in accordance with the public notice. Since no members of the public attended the hearing, the presentation of the proposed rule and recordation of the presentation were determined to be unnecessary. Therefore, the hearing was closed at 9:42 a.m., and a memo stating the circumstances was added to the file.

That the above statements are true to the best of my knowledge and belief.

Craig A. Wright
Acting Director
Air Resources Division

**COMPILATION OF PUBLIC COMMENTS AND NEW
HAMPSHIRE'S RESPONSE THERETO**

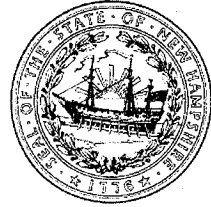
40 CFR Part 51, Appendix V, 2.1(h)



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner

*Celebrating 25 Years of Protecting
New Hampshire's Environment*



**FP 2013-14, Env-A 1900 Incinerators (n/k/a Incinerators and Wood Waste Burners)
Summary of Comments on Initial Proposal with DES Responses
April 3, 2013**

Introduction

The existing rules, Env-A 1900, provide emission standards for incinerators that are not otherwise regulated under federal rules. The Department of Environmental Services (DES) proposed to readopt Env-A 1900 because it was scheduled to expire on February 26, 2013. As part of the readoption, revisions were proposed to include incinerators for which no specific federal rules apply and to delete sections pertaining to incinerators that are now subject to more stringent federal standards or are covered by other state rules. In a companion rulemaking, DES proposed to revise the definition of incinerator (Env-A 101.104) to include wood waste burners.

Because Env-A 1902.02 refers to recently proposed Env-A 2103.03, DES received comments from the U.S. Environmental Protection Agency (EPA) on that section in this rulemaking. The portions of the comments that are relevant to Env-A 1900 are noted below, with DES's responses. (EPA's comments were received after the comment period deadline for the Draft Final Proposal (DFP) of Env-A 2100 and after DES had filed the final proposed rules. However, because similar comments were received on the DFP from another source, the essence of EPA's comments is addressed in the Summary of Comments and Responses prepared for Env-A 2100 (FP 2012-163). DES thus has not addressed them here.)

Comment #1: It is unclear from the language of Env-A 2103.03(i) whether affirmative defenses would apply in state enforcement actions only.

DES Response: DES drafted the language using EPA's 1999 clarification of its startup, shutdown, and malfunction policy as a guide. On page 2 of the attachment to the memorandum to Regional Administrators from Steven A. Herman and Robert Perciasepe, EPA stated: "If approved into a SIP, an affirmative defense would be available to sources in an enforcement action seeking penalties brought by the state, EPA, or citizens. However, a determination by the state not to take an enforcement action would not bar EPA or citizen action." DES believes that the rule (which has been renumbered as (g)) is clear as written when read in context, in particular with what is now paragraph (e) of the section.

Comment #2: DES should ensure that its affirmative defense provisions are consistent with EPA's most recent clarification of its affirmative defense policy. Specifically, EPA's February 22, 2013 proposed rule (78 Fed. Reg. 12,460) disallows startup and shutdown affirmative defenses.

DES Response: DES acknowledges that EPA is proposing to disallow affirmative defenses for startups and shutdowns; this is discussed more fully in the Summary of Comments and Responses prepared for Env-A 2100 (FP 2012-163). In Env-A 1900, DES has revised Env-A 1902.02 to clarify that a source may raise an affirmative defense only in a penalty action based on a malfunction-based violation.